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EXAMINER

TRAN, HAI V

ART UNIT PAPER NUMBER

2623

DATE MAILED: 04/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/736,456

Applicant(s)

HUNT ET AL.

Examiner

Hai Tran

Art Unit

2623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 41-85 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 41-85 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 01/19/2006 has been entered.

Response to Arguments

Applicant's arguments filed 12/22/2005 have been fully considered but they are not persuasive.

Applicant argues, "Gerace system does not contemplate the selection of content automatically and in real time based on aggregate usage metric."

In response to Applicant's arguments against the references individually, one cannot show non-obviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In this instant, limitation "content delivery system being operative to automatically select content elements in real time", and "automatically adjusting the media content in real time based on the monitoring", "determining in real time whether to include the programming element in an imminent transmission based on

said monitoring”, “determining in real time whether to include the advertising element in an imminent transmission based on said monitoring” and “automatically select content elements in real time and actively deliver said selected content elements...” in amended claims 41, 62, 71, 78 and 85 respectively is met by Stern, see (dynamically updated, see Abstract; continuously updated, Col. 3, lines 45-57; Col. 9, lines 15-Col. 10, lines 14). As such, a new ground of rejection is followed.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 41-61 and 85 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stern (US 6486892) in view of Gerace (US 5848396).

Claim 41, Stern (Col. 7, lines 35-60) discloses a system for controlling content delivery to an audience using a concurrent delivery system that delivers content to at least a 1st portion of the audience over a channel-tuned broadcast spectrum (non-web related information) and to at least a second portion of the audience over an addressable network using an Internet protocol (Web related information). Stern further discloses the content delivery system (Fig. 1, el. 8) has access to a plurality of content elements 10-13. Stern further discloses the content delivery system being controlled by the audience interaction monitor system and being operative to

automatically select content elements in real time and actively deliver selected content elements (advertisement) to the 1st and 2nd portions of the audience (dynamically update user profile so to deliver information up-to-date; Col. 3, lines 45-57; Col. 9, lines 15-Col. 10, lines 14)

Stern does not disclose an aggregate (gather) audience interaction monitor system that monitors the addressable network (Internet network) and generate at least one audience metric corresponding to aggregate (gather) usage by plural persons within the 2nd portion of the audience (Web users) and the content delivery system being deliver selected content elements (advertisement) to the 1st and 2nd portions of the audience based on the at least one audience metric.

Gerace discloses an audience interaction monitor system (Fig. 2) that monitors the addressable network (Internet network) and generate at least one audience metric corresponding to aggregate (gather) usage by plural persons within the 2nd portion of the audience (Web users) and the content delivery system being controlled by the audience interaction monitor system and being operative to actively deliver selected content elements (advertisement) to the 1st and 2nd portions of the audience based on the at least one audience metric (Col. 2, lines 45-53; Col. 4, lines 1-36; Col. 5, lines 25-40; Col. 11, lines 45-Col. 12, lines 42). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Stern with Gerace so to provide to user agate information combined in a common screen view or separately in respective screen view with advertisements in accordance with the psychographics profile of user.

Claim 42, Gerace further discloses wherein the audience monitor stores historical data reflecting the usage by the 2nd portion of the audience (Internet audience; Fig. 2, el. 73; Col. 4, lines 37-47).

Claim 43, "wherein the audience metric is an audience level metric characterizing the aggregate of the 1st portion of the audience" is further met by Gerace because Gerace 's the format of the media schedule page also includes one table for television listing for each TV program for user to select for viewing (Col. 10, lines 12-18). Thus , the audience metric disclosed by Gerace is also applicable to an audience level metric characterizing the aggregate of the 1st portion of the audience (Non-Internet audience).

Claim 44, since the audience metric disclosed by Gerace is also applicable to an audience level metric characterizing the aggregate of the 1st portion of the audience; therefore, Gerace 's audience metric is also a surrogate metric characterizing the aggregate of the 2nd portion of the audience (Internet audience).

Claim 45, Gerace further discloses wherein the audience metric is a gain/loss metric characterizing change in usage by the 2nd portion of the audience (Col. 2, lines 35-59 and Col. 15, lines 1-45).

Claim 46 , Gerace further discloses wherein the audience metric reflects usage as a function of time (Col. 15, lines 1-25).

Claim 47, Gerace further discloses wherein the audience metric reflects usage associated with at least one content element (Col. 15, lines 1-25).

Claim 48, Gerace further discloses wherein the content delivery system includes an automated decision system having an associated set of business rules used in conjunction with the audience metric to select content elements for delivery (Col. 15, lines 25-45).

Claim 49, Gerace further discloses wherein the business rules are configured to maximize the audience (Col. 15, lines 25-45).

Claim 50, Gerace further discloses wherein the business rules are configured to maximize audience for selected content elements (Col. 15, lines 25-45).

Claim 51, Gerace further discloses wherein the business rule are configured to maximize audience for selected content elements by temporally placing the selected content elements after other content elements having an associated audience metric above a predetermined level (Col. 18, lines 1-27).

Claim 52, Gerace further discloses wherein the business rule reflects contract-specified monetary values associated with at least a portion of the content elements (Col. 19, lines 37-40).

Claim 53, Gerace further discloses wherein the business rules are configured to use the monetary values to maximize advertising profits (Col. 19, lines 37-40-65).

Claim 54, Gerace further discloses wherein the audience interaction monitor system captures location information about members of the 1st portion of the audience (Col. 6, lines 5-8; Col. 16, lines 30-36 and Col. 22, lines 44-48).

Claim 55, Gerace further discloses wherein the audience interaction monitor system captures location information about members of the 1st portion of the audience and wherein the content delivery system delivers content to the 2nd portions of the audience selectively based on the location information (col. 21, lines 29-40).

Claim 56, Gerace further discloses wherein at least a portion of the content elements corresponds to a contractual relationship between a broadcasting entity and an advertising entity and wherein the contractual relationship has contractual terms that depend upon the at least one audience metric (Col. 19, lines 37-40).

Claim 57, Gerace further discloses wherein the contractual terms specify a monetary incentive to the broadcasting entity based at least in part on the at least one audience metric (Col. 19, lines 37-40).

Claim 58, Gerace further discloses wherein the contractual terms specify favored lead content elements and provide for the delivery of such favored lead content elements under predefined conditions (Col. 19, lines 65-Col. 20, lines 11).

Claim 59, Gerace further discloses wherein the contractual terms specify a monetary incentive to the broadcasting entity to refrain from delivering content elements when audience levels are below specified levels (Col. 12, lines 65-Col. 13, lines 26 and Col. 15, lines 1-44).

Claim 60, Gerace further discloses wherein the contractual terms specify a monetary incentive to the broadcasting entity to selectively deliver predetermined content elements when audience level are above specified level (Col. 15, lines 1-45 and Col. 18, lines 1-27).

Claim 61, Gerace further discloses wherein the contractual terms associate a plurality of advertising content elements with the advertising entity and further provide monetary incentive to the broadcasting entity to preferentially broadcast selected one of the advertising content elements based on accumulated empirical

information on audience level gains and losses associated with such advertising content elements (Col. 18, lines 50-Col. 20, lines 11).

Claim 85 is analyzed with respect to claim 41.

2. Claims 62-70 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mao et al (US 6459427) in view of Gerace (US 5848396) and further in view of Stern (US 6486892).

Claim 62, Mao discloses a method for adjusting media content transmitted to an audience (Col. 3, lines 5-30) comprising:

Simulcasting the media content to the audience (audience selects broadcast) and to a surrogate audience comprising plural persons (many persons select simulcast; Col. 7, lines 5-18);

Mao discloses HTML based webcasting content may be customized based on each consumer' individual profile and viewing time (Col. 4, lines 50-53).

Mao does not clearly disclose "monitoring at least one of response of the surrogate audience to the media content and audience characteristics of the surrogate audience; and adjusting the media content based on the monitoring."

Gerace discloses monitoring at least one aggregate (gather) response of the surrogate audience to the media content and audience characteristics of the surrogate audience; and adjusting the media content based on the monitoring (Col. 2, lines 45-53; Col. 4, lines 1-36; Col. 5, lines 25-40; Col. 11, lines 45-Col. 12, lines

42). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Mao with monitoring at least one aggregate (gather) response of the surrogate audience to the media content and audience characteristics of the surrogate audience; and adjusting the media content based on the monitoring, as taught by Gerace, so to provide to user aggregate information combined in a common screen view or separately in respective screen view with advertisements in accordance with the psychographics profile of user.

Mao in view of Gerace does not clearly disclose "automatically adjusting the media content in real time based on the monitoring".

Stern discloses the content delivery system being controlled by the audience interaction monitor system and being operative to automatically select content elements in real time and actively deliver selected content elements (advertisement) to the audience (dynamically update user profile so to deliver information up-to-date; Col. 3, lines 45-57; Col. 9, lines 15-Col. 10, lines 14). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Mao in view of Gerace with the teaching of dynamically updating user profile so to deliver information up-to-date, as taught by Stern, so to better fine tune user needs by retrieving information or data on topics that user is likely to be interested in, even though the user himself may not know that such topics or information exists (Col. 9, lines 55-63).

Claim 63, Gerace further discloses wherein the monitoring substantially occurs in real time (Col. 5, lines 8-40);

Claim 64, Gerace further discloses wherein the adjusting substantially occurs in real time (Col. 4, lines 30-35).

Claim 65, Mao further discloses wherein the simulcasting correspond to Performing at least one of a traditional broadcast 30 and traditional narrowcast, wherein the media content is distributed to members of the audience via at least one of airwave and cable (Fig. 1); and

Performing at least one of a streaming broadcast 40,110 and a streaming narrowcast via Internet technology (Fig. 1,2), wherein streaming media content is distributed to a member of the surrogate audience in response to a stream request (Col. 7, lines 27-63).

Claim 66, Gerace further discloses wherein the monitoring corresponds to measuring media content consumption of a surrogate audience member (Col. 5, lines 26-40 and Col. 12, lines 65+).

Claim 67, Gerace further discloses wherein the measuring occurs relative to geographic location of the surrogate audience member (Col. 6, lines 3-8).

Claim 68, Gerace further discloses wherein the measuring occurs relative to demographic location of the surrogate audience member (Col. 6, lines 3-8).

Claim 69, "wherein the measuring occurs relative to domain type of the surrogate audience member" is further met by Gerace because the User is automatically assigned to ISP Internet domain type every time the user log on the Internet through his Internet Service Provider; see Gerace Col. 4, lines 1-5; lines 65-Col. 5, lines 15.

Claim 70, Gerace further discloses wherein the media content is defined in terms of content elements (advertisements), and wherein the adjusting corresponds to assigning a status to a content element based on the monitoring (Col. 15, lines 1-45);

Determining whether to include the content element in an imminent transmission based on the assigned status and reflecting results of the determining in the imminent transmission (Col. 17, lines 10-18 and Col. 18, lines 1-27).

3. Claims 71, 73, 75-78, 80-84 are rejected under 35 U.S.C. 103(a) as being unpatentable Gerace (US 5848396) in view of Stern (US 6486892).

Claim 71, Gerace discloses a method for increasing audience for media content, wherein the media content comprises content elements (Col. 19, lines 60-65), comprising:

Monitoring previous audience response to a content element (Col. 5, lines 8-15);

Determining whether to include the programming element in an imminent transmission based on the monitoring and reflecting results of the determining in the imminent transmission (Col. 17, lines 10-18 and Col. 18, lines 1-27).

Gerace does not clearly disclose the determining is in real-time.

Stern the content delivery system being controlled by the audience interaction monitor system and being operative to automatically select content elements in real time and actively deliver selected content elements (advertisement) to the audiences (dynamically update user profile so to deliver information up-to-date; Col. 3, lines 45-57; Col. 9, lines 15-Col. 10, lines 14). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Gerace with the teaching of dynamically/real-time update user profile so to deliver information up-to-date, as taught by Stern, so to better fine tune user needs by retrieving information or data on topics that user is likely to be interested in, even though the user himself may not know that such topics or information exists (Col. 9, lines 55-63).

Claim 73, Gerace further discloses monitoring current audience characteristics (Col. 5, lines 8-15; Col. 6, lines 58-65+).

Claim 75, Gerace further discloses wherein the content element corresponds to a programming element, the method further comprising assigning a favored lead status to the programming element based on favorable audience response (Col. 14, lines 65-Col. 15, lines 45), wherein the determining corresponds to resolving to include the programming element in the imminent transmission when audience level is high based on the favored lead status (Col. 19, lines 65-Col. 20, lines 11).

Claim 76, Gerace further discloses wherein the content element corresponds to an advertising element, wherein the monitoring corresponds to detecting an unfavorable audience response (Col. 14, lines 65-Col. 15, lines 45), and wherein the determining corresponds to resolving not to include the advertising element in the imminent transmission based on the unfavorable audience response (Col. 18, lines 1-10):

Claim 77, Gerace further discloses wherein the disfavored advertising element has an associated sponsor, wherein the imminent transmission corresponds to a next available spot for the associated sponsor, and wherein the reflecting corresponds to replacing the disfavored advertising element with an advertising element of the associated sponsor that is not disfavored (Col. 18, lines 1-26).

Claim 78 is analyzed with respect to claim 71.

Claim 80, Gerace further discloses wherein a portion of the advertising element has a condition associated with satisfactory delivery (Col. 12, lines 23-42), and wherein the determining corresponds to detecting whether the condition met (Col. 12, lines 57-Col. 13, lines 33).

Claim 81, Gerace further discloses wherein the delivering corresponds to delivering an advertising element included in the portion only if the condition met (Col. 15, lines 1-45).

Claim 82, Gerace further discloses wherein the delivering corresponds to delivering an advertising element not included in the portion if the condition is not met (Col. 15, lines 1-45).

Claim 83, Gerace further discloses wherein at least one advertising element is a premium advertising element compared to at least one other non-premium advertising element (Col. 19, lines 35-41), wherein the monitoring corresponds to detecting a current audience level, and wherein the determining corresponds to resolving the include the premium advertising element in the imminent transmission in favor of the non-premium advertising element when the current audience level is high (Col. 19, lines 19-32).

Claim 84, Gerace further discloses wherein the monitoring occurs in real time (Col. 5, lines 8-40 and Col. 15, lines 25-45), and wherein the determining is based on audience characteristics proximate in time to the delivery (Col. 4, lines 30-35 and Col. 18, lines 1-15).

4. Claims 72, 74 and 79 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gerace (US 5848396) in view of Stern (US 6486892) and further in view of Mao et al (US 6459427).

Claim 72, Gerace (Col. 4, lines 30-47) in view of Stern further discloses deeming of the surrogate audience is representative of the response of the audience.

Gerace does not clearly disclose simulcasting the media content to an audience and a surrogate audience.

Mao discloses simulcasting the media content to an audience and a surrogate audience (Col. 2, lines 23-65+). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Gerace in view of Stern with Mao so consumer can access from one of the service, i.e., broadcast, simulcast, at any given time (Col. 7, lines 5-15).

Claim 74, Mao further discloses monitoring current audience characteristics, and Deeming that the audience characteristics of the surrogate audience are

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representative of the audience characteristic of the audience (Col. 3, lines 25-29; Col. 4, lines 40-52).

Claim 79 is analyzed with respect to claim 72.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hai Tran whose telephone number is (571) 272-7305. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher S. Kelley can be reached on (571) 272-7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

HT:ht
03/30/2006


HAI TRAN
PRIMARY EXAMINER